

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAMERON G. ROUPE,

Plaintiff,

v.

JAMES STRICKLAND and ADAM  
VEACH,

Defendants.

CASE NO. C13-2131-JCC-BAT

ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT BASED  
ON QUALIFIED IMMUNITY

This matter comes before the Court on Defendants' motion for summary judgment based on qualified immunity (Dkt. No. 128), the Report and Recommendation ("R&R") of the Honorable Brian A. Tsuchida, United States Magistrate Judge (Dkt. No. 140), Plaintiff's response to the motion for summary judgment (Dkt. No. 142), Plaintiff's objections to the R&R (Dkt. No. 143), and Defendants' reply (Dkt. No. 145). Having thoroughly considered the parties' briefing, the R&R, and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion and adopts the R&R for the reasons explained herein.

**I. BACKGROUND**

In this 42 U.S.C. § 1983 action, Plaintiff Cameron G. Roupe alleges that Defendant Strickland violated his constitutional rights when he unlawfully tased him in the scrotum and that Defendant Veach violated his constitutional rights when he stood by and failed to report

1 Defendant Strickland's use of the taser. (Dkt. No. 9.) Defendants move for summary judgment  
2 based on qualified immunity. (Dkt. No. 128.)

3 The factual background of the case is discussed in depth in the R&R (Dkt. No. 140 at 1-  
4 7) and the Court will not rehearse those facts here. However, the R&R does not discuss some of  
5 the details of Plaintiff's taser claim that are relevant for the instant motion. Specifically,  
6 Defendants' claim of qualified immunity must be assessed in light of Plaintiff's claim that  
7 Defendant Strickland's decision to tase him was a direct response to a defiant comment by  
8 Plaintiff, and was not intended to address any physical threat posed by Plaintiff. (Dkt. No. 9 at  
9 10-11.) Plaintiff alleges that, in response to his comment, Defendant Strickland "shut the curtain  
10 that surrounded Plaintiff's restraint bed, pulled out his taser, pointed the taser at Plaintiff's crotch  
11 area and fired the taser, striking Plaintiff on his scrotum." (Dkt. No. 9 at 11.) Plaintiff further  
12 alleges that the taser "left serious, severe, red and blue, puffy marks and abrasions upon [his]  
13 scrotum." (Ex. 1., Dkt. No. 142 at 14.)  
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## 15 **II. DISCUSSION**

### 16 **A. Standard of Review**

17 This Court reviews the record *de novo* when considering objections to a magistrate  
18 judge's R&R. *See* 28 U.S.C. § 636(b)(1). Because Plaintiff is proceeding pro se, this Court must  
19 interpret his complaint and objections liberally. *See Bernhardt v. Los Angeles County*, 339 F.3d  
20 920, 925 (9th Cir. 2003). Here, the R&R was issued before Plaintiff responded to the motion for  
21 summary judgment. The document that Plaintiff filed as an "objection" to the R&R (Dkt. No.  
22 143) does not raise any new objections, and instead asks the Court to decline to accept the R&R  
23 for reasons that are addressed in his response to the motion for summary judgment. (Dkt. No.  
24 142.) The Court therefore considers Plaintiff's response to the motion (Dkt. No. 142) as an  
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1 objection to the R&R.

2 **B. Summary Judgment**

3 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, “[t]he court shall grant  
4 summary judgment if the movant shows that there is no genuine dispute as to any material fact  
5 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In making such  
6 a determination, the Court must view the facts and justifiable inferences to be drawn there from  
7 in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
8 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the  
9 opposing party “must come forward with ‘specific facts showing that there is a *genuine issue for*  
10 *trial.*’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting  
11 Fed. R. Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a  
12 dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to  
13 return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-  
14 specific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.”  
15 *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888–89 (1990). Ultimately, summary  
16 judgment is appropriate against a party who “fails to make a showing sufficient to establish the  
17 existence of an element essential to that party’s case, and on which that party will bear the  
18 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

21 **C. Qualified Immunity Standard**

22 Government officials acting under color of law are shielded from civil liability for  
23 constitutional violations unless every reasonable official in the defendant official’s position  
24 would have recognized the conduct in question to constitute a constitutional violation.  
25

26 Qualified immunity shields government officials from “liability for civil damages insofar

1 as their conduct does not violate clearly established statutory or constitutional rights of which a  
2 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A right  
3 is clearly established if the “contours of the right [are] sufficiently clear that [every] reasonable  
4 official would understand that what he is doing violates that right. This is not to say that an  
5 official action is protected by qualified immunity unless the very action in question has  
6 previously been held unlawful; but it is to say that in the light of pre-existing law the  
7 unlawfulness must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). *See also*  
8 *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083 (2011).

10 **D. Excessive Use of Force**

11 As discussed in the R&R, in determining whether the use of force against a prisoner  
12 violates the Eighth Amendment, the core inquiry is whether the force was applied “in a good  
13 faith effort to maintain or restore discipline or maliciously and sadistically to cause harm.”  
14 *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). The determination of whether force is excessive  
15 and violative of the Eighth Amendment involves an evaluation of both the objective and  
16 subjective components of the alleged violation. *Id.* The subjective component relates to whether  
17 or not the defendant had a “wanton” state of mind when he engaged in the use of force. *Id.*

19 Here, the Court agrees with the R&R in the determination that Officer Strickland used the  
20 taser because Mr. Roupe posed an immediate threat to the safety of Officer Chad Lisenby when  
21 he grabbed Mr. Lisenby’s fingers and bent them backwards.

23 Had Officer Strickland used the taser in the manner alleged in Plaintiff’s complaint, the  
24 use of force might well be characterized as excessive, since the allegations suggest that the point  
25 of the tasing was to maliciously and sadistically cause harm, and because this would have  
26 required a wanton state of mind. However, as outlined in the R&R, there is virtually no evidence

1 in the record to support these allegations. Mr. Roupe never reported taser injuries to hospital  
2 medical staff; there is no reference anywhere in the Providence EMC records to any complaint  
3 by Mr. Roupe that he was tased in the scrotum or genitals; there is no record that he reported  
4 symptoms involving his scrotum or genitals; Snohomish County Jail records of the medical and  
5 psychiatric assessment performed when Mr. Roupe was booked into the jail address Mr. Roupe's  
6 complaints about other injuries, but say nothing about injuries to the scrotum or genitals; Mr.  
7 Roupe's complaint with the Marysville Police Department did allege that he was unlawfully  
8 tazed, but did not include any claim that he was tased in the scrotum or genitals. Moreover, the  
9 Declaration that Mr. Roupe submitted in support of the instant complaint first claims that  
10 Defendant Strickland "applied the Taser to [his] thigh" (Ex. 1, Dkt. No. 142 at 6) before saying  
11 that the tasing injured his scrotum (*Id.* at 14). If the injury to the scrotum was an incidental  
12 consequence of having been tasered in the thigh in an effort to secure Officer Lisenby's safety, it  
13 would not have been the result of a wanton state of mind.  
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16 The Court therefore finds that, when viewed in the light most favorable to Mr. Roupe,  
17 there is insufficient evidence for a reasonable jury to conclude that Officer Strickland's use of  
18 force was excessive. The violations of Marysville Police Department tasing policies that are  
19 alleged in Plaintiff's pleadings do not amount to evidence of excessive force sufficient to change  
20 this analysis. (Dkt. No. 142 at 12-25.) Consequently, there is no genuine issue of material fact as  
21 to this issue, and Defendant Strickland is entitled to summary judgment.  
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23 **E. Claim Against Defendant Veach**

24 The Court agrees with the R&R on this issue. There is no evidence that Officer Veach  
25 deprived Mr. Roupe of any federally protected right. Officer Veach is therefore entitled to  
26 summary judgment.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court does hereby find and ORDER:

3 (1) The Court adopts the Report and Recommendation.

4 (2) Defendants' motion for summary judgment (Dkt. No. 128) is GRANTED and all of  
5 Plaintiff's claims are DISMISSED with prejudice.

6 (3) The Clerk is directed to send copies of this Order to Plaintiff and to Judge Tsuchida.

7 DATED this 6th day of January 2015.  
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14 John C. Coughenour  
15 UNITED STATES DISTRICT JUDGE  
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